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Attorneys for Defendant
GOOGLE INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

ORACLE AMERICA, INC.,

Plaintiff,

v.

GOOGLE INC.,

Defendant.

Case No. 3:10-cv-03561 WHA

**GOOGLE INC.'S PROPOSED
ADDITIONAL LANGUAGE FOR
PATENT JURY INSTRUCTION NUMBER
23**

Dept.: Courtroom 8, 19th Floor
Judge: Hon. William Alsup

1 Pursuant to the Court's invitation at the charging conference, Google proposes that the
2 Court add the following language to patent jury instruction number 23:

3 To establish willful blindness, it is not enough under the law to show that there is
4 merely a "known risk" that the induced acts are infringing, or that Google was
only deliberately indifferent to that risk.

5 The proposed language comes directly from *Global-Tech Appliances, Inc. v. SEB S.A.*,
6 131 S. Ct. 2060 (2011), the case that recognized the possibility of willful blindness being applied
7 to indirect infringement. Specifically, it is drawn from the following passage:

8 The test applied by the Federal Circuit in this case departs from the proper willful
9 blindness standard in two important respects. First, *it permits a finding of*
10 *knowledge when there is merely a "known risk" that the induced acts are*
11 *infringing. Second, in demanding only "deliberate indifference" to that risk,* the
Federal Circuit's test does not require active efforts by an inducer to avoid
knowing about the infringing nature of the activities.

12 *Id.* at 2071 (emphases added).

13 Dated: May 10, 2012

KEKER & VAN NEST LLP

14 By: /s/ Robert A. Van Nest
15 ROBERT A. VAN NEST

16 Attorneys for Defendant
17 GOOGLE INC.
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